

## **REMARK**

Applicant respectfully requests reconsideration of this application. Claims 4, 5, and 6 have been amended. No claims have been added or cancelled. Therefore, claims 1-6 are present for examination.

First, the Applicant wishes to thank the Examiner for the interview conducted on July 22, 2002. While the Examiner's suggestions have been considered, the Applicant believes that the current claims are allowable over the prior art, and do not warrant modification. As such, the arguments discussed during the interview are reiterated herein. It is respectfully requested that the Examiner consider these arguments.

### **35 U.S.C. §103 Rejection**

#### **Fisher et al in view of Cooper and in further view of Braddock III**

The Examiner has rejected claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (U.S. Patent No. 5,835,890) in view of Cooper (Going going gone, Traditional gives away to technology, British Telecom World, March 1990), and further in view of Braddock, III (U.S. Patent No. 4,412,287).

**Fisher** discloses a system for conducting an interactive auction without the use of a human auctioneer to conduct the auction. The system allows a group of bidders to interactively place bids over a computer or communications network. Bids are recorded by the system, and bidders are updated with the current auction information. When appropriate, the system closes the auction from further bidding, and notifies the winning bidders and losers as to the auction outcome.

**Cooper** discloses an auction system that allows online bidders to bid against live bidders during a live auction. In Cooper, all bidders participate in the auction as if they were at the auction (“[A] return-link key pad transmitted bids through telephone lines and data channels, allowing buyers to place their bids as though they were in the Bond Street auction room itself.”; Cooper, page 2, paragraph 10.), allowing items to be bidden on by a larger audience (“Clients ... stand to have their property seen by an audience far bigger than could fit into one auction room...”; Cooper, page 2, paragraph 12), and allowing bidders to bid in the comfort of their own home or gallery (“The system was developed with two types of clients in mind - the individual purchaser who prefers to bid from the privacy of home, and dealers wanting to view and bid from their galleries.”; Cooper, page 2, paragraph 5.)

**Braddock** discloses an automated stock exchange in which a computer matches buy and sell orders for a plurality of stocks. In a first phase, the system collects orders, and in the second phase, the system executes the orders. A member broker may enter orders to purchase or sell stocks, orders to cancel stocks, and requests to display a summary of the current orders in a given stock.

For the reasons discussed below, the Applicant respectfully disagrees with the Examiner’s characterization and combination of these references.

First, the Applicant maintains that the use of Fisher is an improper reference because it lacks the motivation to be combined with other references to produce the Applicant’s invention as recited by the claims. While Fisher teaches an online auction system, Fisher clearly teaches away from an environment in

which a human auctioneer is used to conduct the auction (column 6, lines 4-5).

Fisher exclusively targets an auction environment that is free from elements that are inherent in a live auction (such as an auctioneer), and the costs that are associated with running a live auction. (See column 5, lines 18-22, "... the electronic system is automatic and does not require a human auctioneer, thereby allowing many individual items to be auctioned during the same time period and providing a decrease in costs associated with running an auction.") Since Fisher teaches away from a live auction environment, there would be no motivation for combining it with the teachings of a live auction environment, such as in Cooper.

Secondly, the Applicant submits that the use of Cooper is also an improper reference because it, too, lacks the motivation to be modified in such a way as to produce the Applicant's invention as recited by the claims. Cooper enables bidders to participate in the auction as if they were at the auction ("[A] return-link key pad transmitted bids through telephone lines and data channels, allowing buyers to place their bids as though they were in the Bond Street auction room itself."; Cooper, page 2, paragraph 10.). Thus, in Cooper, a user manually increases bids as bids increase during the auction. The use of an online system, such as that of the Applicant's invention as recited by the claims, relieves users of the need to manually increase bids by allowing user to submit maximum proxy bids. Since maximum proxy bids are not used in live auctions, the use of maximum proxy bids would detract from the "live auction experience" that Cooper promotes. As such, Cooper teaches away from the use of an online system, such as that taught in Fisher, since the use of such an online system

would not contribute to a live auction experience. Therefore, Cooper lacks the motivation to be combined with online teachings, such as those of Fisher.

Thirdly, the Applicant respectfully submits that the use of Braddock is improper because its teachings are directed to a stock exchange, rather than an auction. According to "dictionary.com", an auction is a "public sale of property to the highest bidder". In contrast, a stock exchange is defined as a "place where stocks, bonds, or other securities are bought and sold".

Unlike a stock exchange, an auction is a venue - whether a physical or virtual (i.e., online) one - where buyers can bid on items, and where items are sold to the highest bidder. In an auction, multiple buyers bid on a single item, and the single item is sold to the highest bidder.

In a stock exchange, however, multiple buyers bid on multiple stocks. Furthermore, the price of the stocks is not controlled by the highest bidder. It is controlled by conditions of the market, i.e., how many shares of a stock there are, how many buyers are buying, and how many sellers are selling, etc. In a stock exchange, multiple stocks are sold to multiple buyers, whether or not the buyers are the "highest bidder". Since a stock exchange is inherently different from an auction, the teachings of a stock exchange should not be used to modify characteristics of an auction.

Lastly, none of the references teach or suggest a "pre-auction bidding process" as required by claims 3-6. The Applicant maintains that the pre-auction bidding process is a new and novel way to establish a starting bid for an auction to create additional hype about the auction. See Specification, page 11, lines 14-16.

For at least these reasons, the Applicant respectfully requests that the Examiner's rejection of claims 1-6 be withdrawn, and allowed as amended.

### **Conclusion**

Applicant respectfully submits that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicant respectfully requests the rejections be withdrawn and the claims as amended be allowed.

### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

### **Request for an Extension of Time**

The Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover any necessary fee under 37 C.F.R. § 1.17 for such an extension.

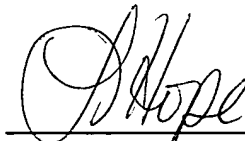
### **Charge our Deposit Account**

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: August 19, 2002



\_\_\_\_\_  
Libby H. Hope  
Reg. No. 46,774

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, California 90025-1030  
(303) 740-1980

## Marked Up Version Showing Changes Made

### In the Claims:

Presented below are the amended claims in a marked-up version showing changes made.

4. (Twice Amended) A method comprising:

establishing a starting bid for an item for a live portion of an auction by  
performing a pre-auction bidding process in an online environment  
for a predetermined amount of time;

communicating the starting bid for the item to the live portion of the  
auction; and

during the live auction portion of the auction:

updating bidding information associated with the item in the online  
environment to reflect a current bid associated with the item  
in the live portion of the auction[.];

accepting a bid from an online bidder in the online environment  
reflecting the online bidder's maximum proxy price[.]; and

bidding against one or more live bidders that are present at the live  
auction portion of the auction until one of:

the maximum proxy price has been exceeded; and

no further live bids are received.

5. (Twice Amended) A computer system comprising:
- a storage device having stored therein a one or more routines for
    - integrating an online bidding process with a live portion of an auction;
  - a processor coupled to the storage device for executing the one or more routines to provide feedback to online bidders in an online environment during the live portion of the auction and serve as a proxy bidder for the online bidders, where:
    - a starting bid is established for an item for the live portion of the auction by performing a pre-auction bidding process in the online environment for a predetermined amount of time;
    - feedback is provided to the online bidders by updating bidding information associated with the item in the online environment to reflect a current bid associated with the item during the live portion of the auction[,]; and
    - proxy bidding is accomplished by accepting a bid from one or more of the online bidders reflecting the online bidders' maximum proxy price and bidding on behalf of the one or more online bidders against one or more live bidders participating in the live portion of the auction until the occurrence of one of:
      - each of the one or more online bidders' maximum proxy price has been exceeded; and



no further live bids are received.

6. (Twice Amended) A machine-readable medium having stored thereon data representing sequences of instructions, the sequences of instructions which, when executed by a processor, cause the processor to: [perform the steps of:]

[establishing] establish a starting bid for an item for a live portion of an auction by performing a pre-auction bidding process in an online environment for a predetermined amount of time;

[communicating] communicate the starting bid for the item to the live portion of the auction; and

during the live auction portion of the auction:

[updating] update bidding information associated with the item in the online environment to reflect a current bid associated with the item in the live portion of the auction,

[accepting] accept a bid from an online bidder in the online environment reflecting the online bidder's maximum proxy price, and

[bidding] bid against one or more live bidders that are present at the live auction portion of the auction until one of:

the maximum proxy price has been exceeded; and

no further live bids are received.